

§ 31.3121(l)-1

26 CFR Ch. I (4-1-11 Edition)

considered to have been filed on the date it was originally furnished to the Internal Revenue Service.

(d) *Installment payment of taxes for retroactive coverage.* This paragraph applies if—

(1) An organization is deemed under paragraph (a) of this section to have filed a valid waiver certificate, but the applicable period described in paragraph (a)(1)(iii) has terminated and all or part of the taxes imposed by sections 3101 and 3111, with respect to remuneration paid by such organization to its employees after the close of such period, remains payable notwithstanding section 3121(k)(4)(C) and paragraph (a)(4) of this section; or

(2) An organization described in paragraph (c) files a valid waiver certificate by March 31, 1978, or, not having filed the certificate by that date, is deemed to have filed the certificate on April 1, 1978, under paragraph (b); or

(3) An individual files a request under paragraph (a)(6) or (b)(5) to have service treated as constituting remuneration for employment (as defined in section 210(a) of the Social Security Act and section 3121(b)).

If this paragraph applies, the taxes due under sections 3101 and 3111 (together with any additions to tax or interest other than interest described in paragraph (c)(4)) with respect to service constituting employment by reason of the waiver certificate for any period prior to the first day of the calendar quarter in which the certificate is filed or deemed filed, or with respect to service constituting employment by reason of an employee request, may be paid in installments over an appropriate period of time, as determined by the district director. In determining the appropriate period of time, the district director shall exercise forbearance and, to the extent possible, grant the organization an installment agreement that will allow it sufficient funds to carry out its basic mission. If any installment is not paid on or before the date fixed for its payment, the total unpaid amount shall become payable immediately and shall be paid upon notice and demand.

(e) *Application of certain provisions to cases of constructive filing.* (1) Except as provided in paragraphs (e)(2) and (3) of

this section, all of the provisions of section 3121(k) (other than subparagraphs (B), (F), and (H) of section 3121(k)(1)) and the regulations thereunder (including the provisions requiring the payment of taxes under sections 3101 and 3111 with respect to the services involved), shall apply with respect to any certificate which is deemed to have been filed under paragraph (a) or (b) of this section, in the same way they would apply if the certificate had been actually filed on that day under section 3121(k)(1).

(2) The provisions of section 3121(k)(1)(E) shall not apply unless the taxes described in paragraph (a)(1)(iii) of this section were paid by the organization as though a separate certificate had been filed with respect to one or both of the groups to which such provisions relate.

(3) The action of the organization in obtaining the refund or credit described in paragraph (b)(1) of this section shall not be considered a termination of such organization's coverage period for purposes of section 3121(k)(3).

(4) Any organization which is deemed to have filed a waiver certificate under paragraph (a) or (b) of this section shall be considered for purposes of section 3102(b) to have been required to deduct the taxes imposed by section 3101 with respect to the services involved.

[T.D. 7647, 44 FR 59524, Oct. 16, 1979]

§ 31.3121(l)-1 Agreements entered into by domestic corporations with respect to foreign subsidiaries.

For provisions relating to the extension of the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act to certain services performed outside the United States by citizens of the United States in the employ of a foreign subsidiary of a domestic corporation, see the Regulations Relating to Contract Coverage of Employees of Foreign Subsidiaries (part 36 of this chapter).

§ 31.3121(o)-1 Crew leader.

The term “crew leader” means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such

person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person. For purposes of this chapter a crew leader is deemed to be the employer of the individuals furnished by him to perform agricultural labor, after 1956, for another person, and the crew leader is deemed not to be an employee of such other person with respect to the performance of services by him after 1956 in furnishing such individuals or as a member of the crew. An individual is not a crew leader within the meaning of section 3121(o) and of this section if he does not pay the agricultural workers furnished by him to perform agricultural labor for another person, or if there is an agreement between such individual and the person for whom the agricultural labor is performed whereby such individual is designated as an employee of such person. Whether or not such individual is an employee will be determined under the usual common-law rules (see paragraph (c) of §31.3121(d)-1).

[T.D. 6744, 29 FR 8320, July 2, 1964]

§31.3121(q)-1 Tips included for employee taxes.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section, tips received after 1965 by an employee in the course of his employment shall be considered remuneration for employment. (For definition of the term "employee" see 3121(d) and §31.3121(d)-1.) Tips reported by an employee to his employer in a written statement furnished to the employer pursuant to section 6053(a) (see §31.6053-1) shall be deemed to be paid to the employee at the time the written statement is furnished to the employer. Tips received by an employee which are not reported to his employer in a written statement furnished pursuant to section 6053(a) shall be deemed to be paid to the employee at the time the tips are actually received by the employee. For provisions relating to the collection of employee tax in respect of tips from the employee, see §31.3102-3.

(b) *Tips not included for employer taxes.* Tips received after 1965 by an employee in the course of his employment do not constitute remuneration for employment for purposes of computing wages subject to the taxes imposed by subsections (a) and (b) of section 3111.

(c) *Tips received by an employee in course of his employment.* Tips are considered to be received by an employee in the course of his employment for an employer regardless of whether the tips are received by the employee from a person other than his employer or are paid to the employee by the employer. However, only those tips which are received by an employee on his own behalf (as distinguished from tips received on behalf of another employee) shall be considered as remuneration paid to the employee. Thus, where employees practice tip splitting (for example, where waiters pay a portion of the tips received by them to the busboys), each employee who receives a portion of a tip left by a customer of the employer is considered to have received tips in the course of his employment.

(d) *Computation of annual wage limitation.* In connection with the application of the annual wage limitation (see §31.3121(a)(1)-1), tips reported by an employee to his employer in a written statement furnished to the employer pursuant to section 6053(a) shall be taken into account for purposes of the tax imposed by section 3101. However, since tips received by an employee in the course of his employment do not constitute remuneration for employment for purposes of the tax imposed by section 3111, they are disregarded for purposes of the annual wage limitation in respect of such tax. Accordingly, separate computations for purposes of the annual wage limitation may be required in respect of an employee who receives tips. The provisions of this paragraph may be illustrated by the following example:

Example. During 1966, A is employed as a waiter by X restaurant and is paid wages by X restaurant at the rate of \$100 a week. At the end of October 1966, A has been paid weekly wages in the amount of \$4,300 and has reported tips in the amount of \$2,200. On November 6, 1966, A is paid an additional week's wages in the amount of \$100 and on November 9, 1966, A furnishes X restaurant a report